ROYAL CANADIAN MOUNTED POLICE

PUBLIC COMPLAINTS COMMISSION

Royal Canadian Mounted Police Act

Part VII
Subsection 45.46(3)

Acting Chairman's Final Report after Public Hearing

Complainant: Donald Goodwin

August 22, 1991

File: 2000-PCC-89113

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ACTING CHAIRMAN'S FINAL REPORT

I. INTRODUCTION

1. The Process

Part VII of the RCMP Act provides that any member of the public may make a complaint concerning the conduct, in the performance of any duty or function under the RCMP Act, of any member of the Force or any other person appointed or employed under the authority of the RCMP Act. The Force has the initial responsibility to investigate complaints and to respond to complainants. Where a complainant is not satisfied with the Force's disposition of a complaint, the complainant may refer the complaint to the Commission for review.

Where, after reviewing a complaint, the Chairman of the Commission is not satisfied with the disposition of the complaint by the Force or considers that further inquiry is warranted, the Commission Chairman may, among other things, institute a hearing to inquire into the complaint. In such a case, the Chairman of the Commission assigns the member or members of the Commission to conduct the hearing and gives a notice in writing of the decision to institute a hearing to the Solicitor General of Canada, the Commissioner of the RCMP, the member whose conduct is the subject-matter of the complaint and the complainant. The members assigned to conduct the hearing must include the member of the Commission appointed for the Province in which the conduct occurred.

Part VII of the RCMP Act requires that a hearing be held in public. At a public hearing the complainant, the member who is the subject of the complaint, and the Force itself through an officer known as the "appropriate officer" are, in person or by legal counsel, entitled to present evidence, to cross-examine witnesses, and to make representations. In addition, any other person who satisfies the Commission that they have a substantial and direct interest in the complaint is entitled to the same procedural rights. The hearing is an inquiry. It is not a civil or criminal trial.

On completion of a hearing, the members of the Commission conducting the hearing are required under the RCMP Act to prepare and send to the Solicitor General and the Commissioner of the RCMP a report in writing setting out such findings and recommendations with respect to the complaint as they see fit. These reports are characterized in the RCMP Act as "interim reports". The Commission has adopted a practice, in the case of public hearings, to make these interim reports available to both the parties to the hearing and the public.

The Commissioner of the RCMP is required to review the complaint in light of the findings and recommendations set out in the Interim Report. The Commissioner of the RCMP must then notify the Solicitor General and the Chairman of the Commission, in writing, of any further action that has been or will be taken with respect to the complaint. Where the Commissioner of the RCMP decides not to act on any findings or recommendations set out in the Interim Report, the Commissioner is required to include the reasons for this decision in the notice given to the Solicitor General and the Chairman of the Commission.

The notice received from the Commissioner of the RCMP is considered by the Chairman of the Commission. The Chairman of the Commission is required to prepare and send to the Solicitor General, the Commissioner and the parties to the hearing a final report in writing setting out such findings and recommendations with respect to the complaint as the Chairman of the Commission sees fit. The Commission is adopting the practice, in the case of public hearing, of making these final reports public.

2. Background to the Final Report

Mr. Donald Goodwin, by a letter of December 11, 1988 addressed to the Attorney General of Nova Scotia, complained about members of the RCMP as a result of incidents relating to the arrest of his son, Shawn Goodwin, on December 10, 1988 in the city of Yarmouth, Nova Scotia. The complaint was forwarded by the Solicitor General of Nova Scotia to the RCMP on January 10, 1989.

The complaint was investigated by the RCMP and its disposition was forwarded to the complainant. Being dissatisfied with the disposition of the complaint, Mr. Goodwin referred the matter to the Commission for review.

On December 8, 1989, the Chairman of the Commission, Dr. Richard Gosse, issued a Notice of Decision to Institute a Hearing to inquire into this complaint. This notice was issued pursuant to subsection 45.43(1) of the Royal Canadian Mounted Police Act, R.S., c. R-9, s.1, as amended.

In his Notice of Decision, Dr. Gosse identified as parties Donald Goodwin as the complainant and the following RCMP members: Constables G.M. Cougle, S.M. Bourassa-Muise, V.R.A. Cameron, D. Charbonneau, J.M. Lacroix and Corporal F.D. Simmons, all of the Yarmouth Municipal Detachment. Other

RCMP members identified as parties were Constables R.G. Forbes and G.W. Kendall, of the Yarmouth Rural Detachment.

A second Notice of Decision to Institute a Hearing, dated October 3, 1990, was issued by Fernand Simard, the Vice-Chairman of the Commission. He did so as a result of his concluding that it would be in the public interest to institute a hearing into other allegations in that same complaint. Those allegations involved the conduct of RCMP members concerning the arrest of one Denise Muise, Shawn's girlfriend, and a friend, John Allen. The Vice-Chairman identified the same parties in his Notice of Decision as those identified in Dr. Gosse's notice.

In both these notices, the members of the Commission assigned to conduct the hearing were Messrs. Blair Mitchell, the presiding member, Graham Stewart and Barry Learmonth. The Commission panel held hearings in Yarmouth on January 21, 22, 23 and 24 and on March 5, 6, 7 and 8, 1991.

The Commission panel report containing findings and recommendations with respect to the complaint was sent to the Solicitor General and the Commissioner on May 24, 1991. A month later, the Commissioner provided to the Solicitor General and the Chairman of the Commission a notice of the action taken or to be taken on the Commission panel's findings and recommendations.

The present report is the final report of the Commission Chairman, as is provided for in Part VII of the RCMP Act. Reproduced as Appendix I is the Commission panel report and as Appendix II, the Commissioner's notice dated June 24, 1991.

II. COMMENTS AND CONCLUSIONS ON THE COMMISSIONER'S NOTICE

For greater clarity, I have reproduced the Commissioner's comments on the findings and recommendations made in the Commission panel report. These will be reproduced in turn and will be followed by my comments and conclusions.

> I share your findings that all members involved acted properly and within the law with regards to the use of force and charges laid.

Since the Commissioner shares the same views as the Commission panel, there is really nothing to add. I am therefore satisfied with the Commissioner's response.

> Although the detention issues surfaced during the hearing and the recommendation addressing these issues are not directly related to the complaint, I will take them under advisement. I will be instructing the Director, Enforcement Services to examine and review this matter. The results will be provided to the Commanding Officer "H" Division who will ensure that all members concerned are aware of proper procedure with respect to the Bail Reform Act.

In his letter of complaint addressed to the Attorney General of Nova Scotia, Mr. Donald Goodwin states that he would appreciate that the Attorney General's Office conduct an investigation into the RCMP actions "concerning their strong-arm methods and trumped up charges against these young people."

Technically speaking therefore, the Commissioner is correct when he states that the detention issues and the application of the Bail Reform Act are not directly related to the complaint. On the other hand, the Commission panel felt obliged to discuss this issue because it related to the conduct of those members involved in the arrest and the prolonged detention of those arrested. It is to be presumed that the Commissioner would want to hear and act upon any recommendations that would be dealing with the conduct of the members of the Force as regards the application of the law.

Indeed, I take the Commissioner's comments to mean that he does attach importance to the findings and recommendations made by the Commission panel in this regard and that he will be ensuring that something is done about the situation. I am therefore satisfied with the Commissioner's response to the Commission panel's recommendations.

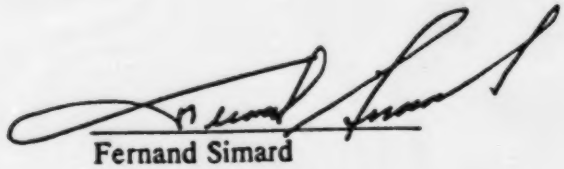
Having said that, I would think that the Commissioner would want to ensure that all the members of the Force are well aware of the relevant Bail Reform Act provisions so that the situation as described in the panel's report is not repeated. I believe that a recommendation which will lead to this ultimate goal is certainly not out of place in this final report.

III. FINAL RECOMMENDATIONS

Pursuant to subsection 45.46(3) of the Act, I hereby recommend that:

> The Commissioner instruct the Director of Enforcement Services to examine and review the situation with a view to ensuring that all members of the Force are aware of proper procedure with respect to the Bail Reform Act.

This report has been prepared by the acting Chairman as authorized under subsection 45.3(2) of the Royal Canadian Mounted Police Act.



Fernand Simard
Acting Chairman

Dated at OTTAWA, this 22nd day of August, 1991

APPENDIX I

CANADA

ROYAL CANADIAN MOUNTED POLICE

PUBLIC COMPLAINTS COMMISSION

Royal Canadian Mounted Police Act

Part VII
Subsection 45.45(14)

Public Hearing
Into the Complaints
of
Donald Goodwin

COMMISSION REPORT

Blair H. Mitchell
Graham W. Stewart
R. Barry Learmonth

R.C.M.P. PUBLIC COMPLAINTS COMMISSION

Royal Canadian Mounted Police Act, 1986

NUMBER: 2000-PCC-89113

IN THE MATTER OF: The Complaint of Donald Goodwin

BEFORE: Blair H. Mitchell
Presiding Member

R. Barry Learmonth
Member

Graham W. Stewart
Member

APPEARANCES:

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HEARING PROCESS

This hearing was held further to two Notices of Decision to Institute a Hearing issued under the relevant provisions of the Royal Canadian Mounted Police Act, Part VII. The first, dated December 8, 1989, and issued by Dr. Richard Gosse, Q.C., Chairman, RCMP Public Complaints Commission, was made pursuant to section 45.43(1) of the Royal Canadian Mounted Police Act, R.S.C. 1986, c. R-9, as amended.

The second, issued by Fernand Simard, Vice-Chairman of the Commission, was also made pursuant to s. 45.43(1) of the Act. The "Gosse" Notice followed allegations made by Donald Goodwin of Arcadia, Nova Scotia respecting the treatment of his son, Shawn Goodwin by members of the RCMP, during and following an incident which occurred in Yarmouth, Nova Scotia on December 10, 1988. The "Simard" Notice, made under the Act's provisions for a "public interest complaint", pertains to the conduct of members of the RCMP involved in the arrest and detention of two other persons, Denise Muise and John Allen, during and following the same incident.

A panel of the Commission, comprised of Blair Mitchell, Presiding Member, Graham Stewart, and Barry Learmonth held hearings in Yarmouth on January 21, 22, 23 and 24 and on March 5, 6, 7 and 8, 1991.

In the course of this hearing, the Commission received fifteen individual or bundles of exhibits and heard the testimony of 28 witnesses. In preparation for the hearing, the Commission visited the relevant area of the K-Mart Plaza, Yarmouth on the evening of January 20, 1991 in the company of counsel for the parties.

EVIDENCE

With respect to the subject matter of the complaints, evidence taken by the Commission generally involved the manner and purpose of the arrests of Shawn Goodwin, Denise Muise and John Allen regarding a December 10, 1989 incident at the K-Mart Plaza, Yarmouth, and matters involving the necessity of their subsequent detention in the Yarmouth County Correctional Centre.

The following is a summary of the evidence presented by each of the witnesses:

Richard Hubbard testified that on the evening of December 10, 1988, he was the bartender at Pepper's Lounge, located in the K-Mart Shopping Plaza, Yarmouth. He stated that between 7:30 and 8:00 p.m., Shawn Goodwin and John Allen were in his lounge for about 10 minutes, during which time they each consumed one ounce of rum and two drinks of liqueur known as "shooters". John Allen returned alone about one hour later and consumed two additional drinks of rum. Richard Hubbard stated that neither Goodwin nor Allen was under the influence of alcohol.

Tammy Thibeau, now aged 19, an acquaintance of Shawn Goodwin, testified that she met Shawn Goodwin near a video arcade in the K-Mart Shopping Plaza on the evening of December 10, 1988. She stated that a uniformed security guard, whose name she learned later was Sheldon Rhyno, approached her while she was talking to Goodwin, told her that she had been in the area for too long and that she should leave. A verbal altercation then started between Shawn Goodwin and Sheldon Rhyno. According to this witness, the confrontation started when Shawn Goodwin told Sheldon Rhyno to leave Tammy Thibeau alone. The witness says Sheldon Rhyno pushed Shawn Goodwin's

shoulder and shook his finger in Shawn Goodwin's face, and that Shawn Goodwin pushed him back. She states that Shawn Goodwin was not excessively loud and was not showing any signs of intoxication. The witness says that both Goodwin and Rhyno uttered obscenities. She says she did not notice whether a crowd was attracted by the altercation but that a few people did turn their heads. Tammy Thibeau gave her opinion that this altercation was started by Sheldon Rhyno.

Darryl Ollenburger testified that he was present at the Mall and witnessed a portion of the Rhyno-Goodwin altercation. He stated that Sheldon Rhyno approached Shawn Goodwin and started arguing, that Sheldon Rhyno shook his finger near Shawn Goodwin's face and that a heated argument between the two ensued. The witness did not notice any sign of intoxication or alcoholic consumption on the part of Shawn Goodwin. He says that he left the area and that, at some point later, he observed Shawn Goodwin being arrested and kicking windows out of a police car in the parking lot adjoining the Mall.

Sheldon Rhyno, a security guard for the K-Mart Shopping Plaza, testified that while working in the Mall at approximately 6:30 p.m. he saw Tammy Thibeau, believed her to be loitering, and asked her to move. In response, he says Shawn Goodwin advised him that, "You won't be moving me - I won't be going anywhere", used obscenities, and invited him outside to fight. The witness denies shaking a finger at Shawn Goodwin or initiating an argument and states there was no physical contact between the two of them. He stated that Shawn Goodwin could be heard from the other end of the Mall and was very angry. Sheldon Rhyno states that he called the RCMP a first time, who arrived at the Mall sometime between 6:30 and 7:00 p.m. and then left without locating Shawn Goodwin. Subsequently, Sheldon Rhyno had a conversation with the witness

Darryl Ollenburger, who advised him of Shawn Goodwin's name. Sheldon Rhyno states that a second incident subsequently occurred when Shawn Goodwin returned to the Mall with John Allen. The witness states that Shawn Goodwin told him, "We'll be getting you for something". After this, the witness again called the police because he feared for his own safety. He states that he met Constable (since promoted to Corporal) Gregory M. Cougle and Cst. Sylvie N. Bourassa-Muise who responded to what he said was this second call when the officers arrived at the Mall. He says Cpl. Cougle and Cst. Bourassa-Muise caught up with Shawn Goodwin in the parking lot area near the front entrance of the Shopping Plaza. From this point in his testimony, the witness basically adopted a written statement he had given to the police in connection with the charges against Shawn Goodwin. He stated generally that he saw Shawn Goodwin leave the Mall and that he witnessed Shawn Goodwin's arrest by Cpl. Cougle for causing a disturbance.

In response to leading questions from Cpl. Cougle's counsel, Sheldon Rhyno also testified that Shawn Goodwin swore at him at the time of Shawn Goodwin's arrest, that Denise Muise interceded with Cpl. Cougle, maintaining that Shawn Goodwin had done nothing wrong, and that the police had no right to arrest him. He also stated Shawn Goodwin struck Cpl. Cougle above the eye, that he, Sheldon Rhyno, had assisted the officers in getting Shawn Goodwin into the police vehicle, and that John Allen and Denise Muise tried to open the doors of the vehicle while Shawn Goodwin was inside.

Morris Babin testified that he was working in a sporting goods store near the area where the Rhyno-Goodwin confrontation occurred. He stated that, although he was about 100 feet away in a semi-enclosed stockroom, he was able to hear the argument and that Shawn Goodwin's was the louder of the two voices involved, Goodwin's voice being much louder than that of

the security guard. He stated that Shawn Goodwin continued challenging the security guard to put him out, even after the security guard began walking away. Morris Babin stated that he believed Shawn Goodwin had been drinking, and that he came to this conclusion because of Goodwin's loud voice and unsteady gait. He also says Shawn Goodwin used obscenities and the security guard did not.

Glen Surette testified that he witnessed the arrest of Shawn Goodwin by Cpl. Cougle near the Mall entrance in the parking lot. He saw Cpl. Cougle attempting to take Shawn Goodwin toward a police vehicle by means of holding Shawn Goodwin's arm behind his back. The witness states that Shawn Goodwin was on his tip toes trying to relieve the pressure from the arm lock imposed by Cpl. Cougle. He then observed both Cpl. Cougle and Shawn Goodwin on the ground wrestling. The security guard, Sheldon Rhyno, then drove up with Cpl. Cougle's police cruiser. He stated that Cpl. Cougle was eventually able to place Shawn Goodwin in the back seat of the police vehicle. The witness says he saw Shawn Goodwin kick out the windows of the rear doors of the police vehicle. He states that he did not witness any interference by either Denise Muise or John Allen. He stated that Denise Muise was expressing a desire to the police that she be allowed to take Shawn Goodwin home with her. He states that a crowd gathered but that no one came to the assistance of the police. The witness observed police officers remove Shawn Goodwin from the damaged police vehicle to a second police cruiser.

Harold Jarvis testified that he witnessed Cpl. Cougle and Cst. Bourassa-Muise attempting to place Shawn Goodwin in the rear seat of a police car. The witness stated that he declined a request made by Cst. Bourassa-Muise to provide physical assistance. He observed Shawn Goodwin kick out the windows of the police vehicle. He stated that, from his

vantage point of between 50 and 75 feet away, he observed other police officers who had subsequently arrived upon the scene push Shawn Goodwin down in broken glass which was lying on the pavement. He observed Denise Muise being arrested after she appeared to wander over to ask what was happening. He stated that Shawn Goodwin "went berserk" inside the police car and tried to escape through the broken window. He said that Cpl. Cougle was not one of the police officers who attempted to handle Shawn Goodwin after he was initially placed in the police vehicle and broke the windows.

Donna Robichaud, a cousin of Shawn Goodwin's, testified that she first observed Cpl. Cougle escort Shawn Goodwin through the parking lot and that Shawn Goodwin appeared not to be moving voluntarily. She stated that a crowd gathering around the event was hollering, cursing and swearing, and that support in the crowd was divided between the arresting officers and Shawn Goodwin. She states that Denise Muise attempted to calm Shawn Goodwin down and that she backed off when told to do so by Cpl. Cougle. She states that she witnessed Cpl. Cougle give orders to another RCMP officer to arrest Denise Muise. The witness did not see Denise Muise or John Allen perform any harassing or obstructing activities. She says that although Denise Muise initially ignored Cpl. Cougle's demands to move away from the police vehicle, she eventually backed off slightly. The witness stated that Shawn Goodwin was extremely uncooperative and fought every inch of the way when Cpl. Cougle attempted to place him in the police vehicle. She says that once eventually placed in the vehicle, Shawn Goodwin tried to climb out the broken window.

When asked if the police struck Shawn Goodwin, Donna Robichaud described the melee as being so wild that the police ended up striking each other and that it appeared to her that they were not particularly attempting to strike Goodwin. She

states that she heard Cpl. Cougle advise Cst. Bourassa-Muise to strike Shawn Goodwin with a flashlight if Goodwin attempted to leave the police vehicle through the broken window. She states she observed Shawn Goodwin unsuccessfully attempt to kick out the rear window of the vehicle after he had successfully smashed the side windows. The witness said the window smashing took place after Shawn Goodwin heard Cpl. Cougle tell Denise Muise to leave or he would arrest her.

Ernest Robichaud, husband of Donna Robichaud, testified that he observed Cpl. Cougle twist Shawn Goodwin's arm behind his back and escort him to the police vehicle. He observed Shawn Goodwin and Cpl. Cougle fighting on the ground and that, in the course of this, Cpl. Cougle lost his hat. The witness stated that Denise Muise pleaded with the police to allow her to help attempt calm Shawn Goodwin down, and that the police did not respond to this offer. He observed other police officers who arrived at the scene remove Shawn Goodwin from the rear of the damaged police vehicle, and says that in doing so they kicked and fought with him. The witness offered his opinion that the police used excessive force. The witness admitted on cross-examination that he attempted to incite the crowd against the police use of force with respect to Shawn Goodwin and that in doing so he called the police "pigs" and probably other names.

Joseph Surette testified that he arrived at the scene of the incident at a point when several RCMP officers had removed Shawn Goodwin from the damaged police vehicle. The witness states that one officer had an object in his hand, which was later determined to be a flashlight, but that he didn't see it used. He observed Cpl. Cougle attempting to exercise crowd control. He stated that another officer had his foot on the back of Shawn Goodwin's head, while other officers held Goodwin's face down on the ground.

Barbara Ann Surette stated that she observed Shawn Goodwin lying on the ground with handcuffs on and that the foot of one RCMP member was on the back of Shawn Goodwin's head pushing Shawn Goodwin's face into the broken police car window glass lying on the ground.

Frank Bullerwell testified that he witnessed most of the altercation. He was parked and was seated in his truck and observed a lot of people were standing around cursing and swearing at the police. He heard Goodwin state, "Let me go, I won't run", to which Cpl. Cougle replied, "No, you tried to run before". He stated that Shawn Goodwin, in fact, did start to run. He observed that Cpl. Cougle had Shawn Goodwin's left arm in a form of arm lock high up behind Shawn Goodwin's back. He witnessed Cpl. Cougle and Shawn Goodwin struggle on the ground and in the course of this struggle, Cpl. Cougle lost his hat and glasses. The witness observed Shawn Goodwin kicking out the side windows of the rear doors of the police vehicle. The witness states that he saw this from his vantage point while seated in the parked truck which was about one driving lane away from the police vehicle. He says that the vehicle's windows exploded with such force that glass landed on his truck. He says he missed some of the activity while he diverted his attention to clean the glass off his truck. He stated that a young lady (Denise Muise) asked Shawn Goodwin to stop kicking. He says he was not in a position to observe Shawn Goodwin being removed from the police vehicle by other officers. However, he says he did observe Shawn Goodwin kick at a door of the vehicle being opened by a police officer and that he saw the door fly back and hit the officer in the head. He witnessed Cpl. Cougle give the order to have Denise Muise and John Allen arrested. He states he never heard the police officers using profanity although he heard a number of

profanities come from the crowd. He stated that Denise Muise and John Allen swore at the police, and that they were both interfering.

Blair Doucette also witnessed the incident from inside his own vehicle which was parked near the scene. He says that after glass flew from the police vehicle, police officers attempted to remove Shawn Goodwin from the vehicle and Goodwin resisted. Eventually they got him out and "threw him down on the ground". He states that several police officers yelled at the crowd to disperse. He did not witness any police officers strike or hit Shawn Goodwin.

Charlie Rogers, a correctional guard who was in charge at the correctional institution the evening of December 10th, testified that he observed Shawn Goodwin when he was later brought to the lock-up by the RCMP. He stated that the only sign Shawn Goodwin showed of having been drinking was the smell of alcohol on his breath, and he gave his opinion that Shawn Goodwin was not intoxicated when brought to the jail. He said Shawn Goodwin had some scrapes and cuts but did not complain of his injuries and there was no significant amount of blood. He did not consider placing Shawn Goodwin in the "dream cell", the facility usually reserved for intoxicated individuals.

Former RCMP Cst. Denis Charbonneau testified that he responded to a 10-33 (the code for the "help me quick" call used in urgent situations by the RCMP) radio call made by Cpl. Cougle when he encountered difficulties with Shawn Goodwin. When Cst. Charbonneau arrived at the Plaza he observed a police cruiser with its windows broken out and that Shawn Goodwin was trying to climb out of the cruiser's rear seat through a broken window. The witness testified that he prevented Shawn Goodwin from escaping by pushing him back in the car. He then opened the rear door of the car and Shawn Goodwin became very agitated

and began kicking at him. He tried to calm him down. Constables Kendall and Forbes then arrived, removed Shawn Goodwin from the vehicle and placed him on the ground where they gained control of, and handcuffed, him. Cst. Charbonneau testified that he then began to exercise crowd control. He estimated that eventually there were about 200 people in the crowd. He heard Ernest Robichaud, a member of the crowd, use the word, "pigs" and make inciting remarks. He heard Cpl. Cougle give instructions to arrest Denise Muise. He did not see either Denise Muise or John Allen conduct any obstructing or harassing activities. Cst. Charbonneau testified that RCMP members are trained to use flashlights in a defensive manner, where necessary, in applying force to effect an arrest. He states he observed Cst. Forbes holding his flashlight and using it defensively to block Shawn Goodwin's kicks. The witness testified that, in his opinion, Shawn Goodwin's actions were those of an impaired individual although he did not know if Shawn Goodwin was in fact impaired.

RCMP Cst. Victor Cameron testified that upon arriving at the scene in response to the 10-33 appeal for assistance, he arrested Denise Muise on the instructions of Cpl. Cougle. He stated that on his arrival she was standing in the parking lot about 20 feet from the car. He states she cooperated in the arrest. He also assisted Cpl. Cougle in the removal of John Allen, who also cooperated and remained "fairly passive". He stated that the arrest of John Allen was effected by Cpl. Cougle. The Constable did not observe Shawn Goodwin being removed from the damaged police vehicle, but did assist in handcuffing Shawn Goodwin who was being held lying on the ground by other officers. He stated he acted completely on the instructions of Cpl. Cougle. He states that he was very concerned about the size of the crowd that had gathered to watch the event. He described Shawn Goodwin as being very

uncooperative in the arrest. He saw no one strike Shawn Goodwin. The witness noted no alcohol on Shawn Goodwin's breath.

RCMP Cst. Robert Forbes testified that when he responded to the 10-33 appeal, he first witnessed Cpl. Cougle and Cst. Bourassa-Muise holding John Allen over the hood of a police vehicle. His observation was that John Allen was not resisting. He witnessed Shawn Goodwin with an arm and leg out of the passenger side window of the police vehicle. He prevented Shawn Goodwin's attempt to exit from the vehicle by grabbing Shawn Goodwin's coat and in the process, pulled it off Shawn Goodwin.

He testified that in effect what he was attempting to do was pull Shawn Goodwin through the window because the police cruiser, with the windows smashed, was not a "secure area" in which to hold a prisoner. The witness testified that he and Cst. Kendall forceably removed Shawn Goodwin from the rear passenger seat of the police vehicle. They became involved after Cst. Charbonneau was unable to do so alone when Shawn Goodwin had begun kicking at him. Cst. Forbes testified that he distracted Shawn Goodwin by waving his flashlight in front of him. This distraction gave Cst. Kendall the opportunity to open the door on the opposite side of the car and to grab Shawn Goodwin by the arms and shoulders. Cst. Forbes says that he then moved to Cst. Kendall's side of the police vehicle and assisted Cst. Kendall in pulling Shawn out by the arms while, at the same time, a third police officer entered the other side of the police vehicle. He states that Shawn Goodwin resisted and yelled insults throughout. He says that once the officers had Shawn Goodwin on the ground, face down, it still took him, Cst. Kendall and at least two other officers to immobilize Shawn Goodwin long enough to handcuff him. Cst. Forbes stated that when the struggle was over, he observed a small amount of

blood on Shawn Goodwin's face and some scrapes. He said there was broken glass on the ground in the area where Shawn Goodwin was subdued. He testified that he did not "beat" Shawn with the flashlight but that he used it to deflect Shawn's kicks.

RCMP Cst. Gerald Kendall testified that he pulled Cst. Charbonneau back from the rear of the police vehicle when Shawn attempted to kick him. He generally confirmed Cst. Forbes' testimony as to how Shawn Goodwin was removed from the damaged police car. He stated that once the handcuffs were applied to Shawn Goodwin, he gave no further physical resistance but continued with verbal abuse. The witness said he noted that Shawn Goodwin had a moderate odour of alcohol on his breath, bloodshot eyes and somewhat slurred speech. Cst. Kendall stated that, from his observations at the time, he would have given Shawn Goodwin a breathalyzer demand had Shawn Goodwin been driving. He stated he was surprised that when he had escorted Shawn Goodwin to the Correctional Centre, Correctional authorities chose not to place Shawn Goodwin in the "dream cell". When he arrived at the scene, Cst. Kendall observed Cpl. Cougle with his hat and glasses off and his coat and sleeves ripped.

RCMP Cst. Joseph Lacroix testified that he also assisted in removing Shawn Goodwin from the rear of the police vehicle. He first entered the car on the opposite side of Constables Forbes and Kendall and talked to Shawn Goodwin, telling him to stay quiet. The witness grabbed Shawn Goodwin's arms to prevent him from holding on to any portion of the vehicle to avoid being taken out. He said Shawn Goodwin was "going nuts", kicking and panicking. He helped subdue Shawn Goodwin when the latter was on the ground by holding one of Shawn Goodwin's legs. The Constable states that he was concerned about the size of the crowd but that he heard nothing specific in terms of derogatory remarks toward the police.

RCMP Corporal Frederick Simmonds testified that Shawn Goodwin was on the ground when he arrived, being held by the other officers. The Corporal "scissored" Shawn Goodwin's legs back to gain further control. He gave his opinion that Shawn Goodwin was drunk and that he had come to this conclusion on having observed Shawn Goodwin's bloodshot eyes, pale appearance and general, upset demeanour. He stated that he had never dealt with anyone as upset as Shawn Goodwin was on that occasion except where such a person was affected by alcohol or drugs or was mentally ill. The witness stated that he heard abusive language directed toward the RCMP members from the crowd.

Staff Sergeant Eugene Anderson, who was section NCO of the Yarmouth RCMP Subdivision at the time of this incident, testified that he was instructed to conduct an investigation into the complaint made by Donald Goodwin on behalf of his son Shawn Goodwin. The witness interviewed many of the witnesses who testified at this hearing in the course of the investigation. He concluded from his investigation that no excessive force was used. This witness also testified with respect to R.C.M.P. policy requiring members to keep up-to-date with the force's operational manual, with respect to performance audits conducted at various levels within the force and related matters.

Assistant Commissioner Joseph Andre Lagasse is the Director of Training for the RCMP. He gave evidence as to standards of training and instruction for RCMP recruits and others, particularly pertaining to the use of force, self-defence and powers of arrest. He reviewed portions of the Basic Recruit Training Course and the RCMP Depot Training Academy Lesson Plans. Copies of those documents were presented to the Commission.

Denise Muise, Shawn Goodwin's girlfriend, testified that she went to the K-Mart Mall at around 9:00 p.m. looking for Shawn Goodwin. She found Shawn Goodwin at the outside of the K-Mart entrance of the Mall together with John Allen. John Allen went back into the Mall to the bar to get a drink when Denise Muise and Shawn Goodwin became engaged in an argument with respect, generally, to Shawn Goodwin's planned activities for the evening. Denise and Shawn Goodwin then entered the Mall together to look for John Allen and found him. While in the Mall, they saw Cpl. Cougle approaching, at which point Shawn Goodwin said, "Here comes the Mounties - let's leave".

The witness says that she, Allen and Goodwin left through the front entrance of the Mall onto an outside concrete platform in front of the entrance and that Cpl. Cougle followed. She said Cpl. Cougle told Shawn Goodwin to stop, and that Goodwin stopped and turned around to face Cpl. Cougle. She says Cpl. Cougle then told Shawn Goodwin he was under arrest for section 85 of the Liquor Control Act, [R.S.N.S. 1967, c. 169; now R.S.N.S. 1989, c. 260, s. 87] that Cpl. Cougle then grabbed Shawn Goodwin's right arm and neck and Constable Bourassa-Muise took hold of Shawn Goodwin's other arm. The two RCMP members then began to conduct Goodwin across the surrounding parking lot.

Denise Muise states that she then asked Cpl. Cougle to let Shawn Goodwin go and assured Cpl. Cougle that Shawn Goodwin would walk by himself. Cpl. Cougle replied in the negative. She says that then, while she does not know how it occurred, both Cpl. Cougle and Shawn Goodwin ended up wrestling on the ground on at least two occasions. Cpl. Cougle asked her to pick up his glasses and she refused, on the basis of what she stated she regarded as Cpl. Cougle's "sarcastic" attitude. She says John Allen, who was beside her, picked up the glasses. She says that at one point while Cpl. Cougle and

Goodwin were on the ground, Cpl. Cougle made a fist as if to strike Shawn Goodwin.

The witness says that, with the help of Cst. Bourassa-Muise, Cpl. Cougle eventually succeeded in placing the struggling Shawn Goodwin into the rear of the police vehicle. While Cpl. Cougle was closing the vehicle door, Shawn Goodwin's legs were still outside the vehicle in an apparent effort to prevent the officer from closing the rear door. The witness stated that Cpl. Cougle slammed the door on Shawn Goodwin's legs two or three times, got the door closed and that, at this point, Shawn Goodwin kicked both side rear windows out of the police car. She states that she tried to calm Shawn Goodwin down by talking to him and trying to give him a cigarette but that Cpl. Cougle would not allow her to do so.

The witness states that she, herself, was arrested by Cst. Cameron, at Cpl. Cougle's request once other police officers arrived on the scene. Denise Muise testified initially that she was neither told the reasons for her arrest nor advised of her legal rights under the Charter of Rights and Freedoms whether at that time or at any time thereafter by Cst. Cameron. She said she asked Cst. Bourassa-Muise why she was being arrested for "obstructing" and that Cst. Bourassa-Muise attempted to explain "obstruction" to her. The witness denied that she at any time touched any police officer or opened or attempted to open the door of the police vehicle which contained Shawn Goodwin. She stated that she had been placed in another police vehicle by the time police officers had removed Shawn Goodwin. She stated she had nothing to drink and she denied that she interfered with Cpl. Cougle or any other officer at any time. She stated that following her arrest she was held in the Correctional Centre overnight and released the next afternoon, on her own recognizance, on the instructions of

Cpl. Cougle. Denise Muise was carrying identification at the time of her arrest.

On cross-examination, Denise Muise admitted raising her voice while requesting Cpl. Cougle to let go of Shawn Goodwin's arm and not to hit him. She admitted approaching the rear door of the police vehicle and laying a hand on the car door with the intention of giving Shawn Goodwin a cigarette. The witness admitted that her arresting officer did tell her at the time of her arrest that she was being arrested for "obstruction". She maintained throughout that Shawn Goodwin was not intoxicated or under the influence of alcohol at the time of his arrest.

John Allen, Shawn Goodwin's companion on the evening of December 10, 1988, testified that he and Shawn Goodwin each consumed one drink of rum and two shooters (liquers) at Pepper's Lounge in the K-Mart Plaza during the early evening. He was present during the altercation between the security guard, Sheldon Rhyno, and Shawn Goodwin. He described this confrontation as a cursing and swearing match between Rhyno and Goodwin and that Shawn Goodwin was quite cocky and "mouthy". With respect to the arrest of Shawn Goodwin, John Allen testified that while he, Denise Muise and Shawn Goodwin were leaving the front entrance of the Mall in a group, Cpl. Cougle appeared behind them and hollered for Shawn Goodwin to stop. He stated Cpl. Cougle did not initially call Shawn Goodwin by name. He states that Shawn Goodwin said nothing in response to Cougle but that Shawn Goodwin did stop. Cpl. Cougle asked Shawn Goodwin his name and Shawn Goodwin told him. John Allen stated that Cpl. Cougle then placed Shawn Goodwin under arrest under section 85 of the Liquor Control Act. Shawn Goodwin asked what section 85 was and Cpl. Cougle replied, "You're drunk".

He stated that Cpl. Cougle then led Shawn Goodwin away by putting Goodwin's right arm behind his back. Shawn Goodwin asked Cpl. Cougle to let go of his arm and Cpl. Cougle refused. The witness stated that Shawn Goodwin was walking on his tiptoes as a result of the pressure on his arm. He testified that Shawn Goodwin then "shrugged off" Cpl. Cougle, in response to which the Cpl. Cougle jumped at Shawn Goodwin and tackled him to the ground. Cpl. Cougle lost his glasses and hat and John Allen picked them up. Cpl. Cougle grabbed the glasses from John Allen's hand and attempted to retrieve his hat. John Allen said he pulled the hat away from Cpl. Cougle and that he then gave it to Cst. Bourassa-Muise. Eventually Cpl. Cougle succeeded in escorting Shawn Goodwin to the police vehicle and placing him in the back seat. He states that he saw Cpl. Cougle slam the rear car door on Shawn Goodwin's legs, and that Cpl. Cougle and other officers took "pokes" at Shawn Goodwin to get him in the car. John Allen testifies, at that point, he pushed Cpl. Cougle intending to distract Cpl Cougle's attention away from Shawn Goodwin. He said that Cst. Bourassa-Muise then restrained him (John Allen) by means of a finger hold. Then, while the witness and Cst. Bourassa-Muise were standing beside the police car, Shawn Goodwin kicked both side rear windows out.

John Allen states that several police officers who arrived at the scene removed Shawn Goodwin from the police vehicle. He states that at that time Cpl. Cougle swung with his fists at Shawn Goodwin but did not connect. He states that he heard one officer suggest kicking Goodwin "in the privates". John Allen testified that Cpl. Cougle then told him to get into the front seat of the police vehicle and that Cpl. Cougle did not use any words of arrest. Other officers then placed Allen in a different police vehicle and handcuffed him. He stated he was told that he had been arrested for obstructing justice. He was taken to the Correctional Centre, held overnight until the following afternoon and was then released

on his own recognizance. John Allen was carrying identification at the time of his arrest. The witness admitted that his friend, Shawn Goodwin, has a quick temper "if provoked" and stated that he, John Allen, would take steps to "protect any friend when they're right".

Shawn Goodwin testified that his first stop on the late afternoon or early evening of December 10, 1988, was the Clipper Ship Tavern where he had nothing to drink. He stated that his friend John Allen bought him one beer but he gave it away. From there they drove to Melbourne to look at a car, and then to Pepper's Lounge, K-Mart Mall, around 7:00 p.m. While at Pepper's, each of the two drank one single rum and two shooters. They played video games in the arcade and he talked to Tammy Thibeau. The witness states that Sheldon Rhyno approached Tammy Thibeau and waved his finger in her face telling her to move along. Shawn Goodwin states that he did not say anything until a point when Sheldon Rhyno swung around and told him to move along as well, pointing his finger in Goodwin's face. Goodwin stated that he told Sheldon Rhyno to "Get your finger out of my face" or he would break Sheldon Rhyno's hand off and "shove it up his ass". Shawn Goodwin states that from this point, the argument escalated into name calling and threats. He denies that Sheldon Rhyno ever asked him to leave the Mall, and says that the guard simply told him to "move along". At this point, Shawn Goodwin stated that he and Allen left the Mall, visited the downtown liquor store, and purchased a quart of rum (from which he stated neither he nor John Allen drank that evening). They then went to the Grand Hotel where he, Shawn Goodwin, rented a room for the night. The reason he gave for this was that he did not intend to go home that night because he expected to be drinking by the end of the evening and did not want to face his girlfriend, Denise Muise, in that condition.

Shawn Goodwin states that at some point during the early evening he and John Allen attended a tavern a second time. They returned to the K-Mart Mall and saw Denise Muise arrive in another vehicle. Shawn Goodwin and Denise Muise had an argument over Shawn Goodwin's proposed activities for the evening, which apparently did not include Denise Muise.

While the argument continued, John Allen went to Pepper's Lounge for one more drink. Shawn Goodwin states that except for the rum and two shooters consumed earlier, he had nothing to drink that afternoon or evening. He stated that he and Denise Muise subsequently entered the Mall to look for John Allen, found him and then saw Cpl. Cougle coming through the Mall entrance. Shawn Goodwin states that he then said to John Allen "We should leave, here comes the cops". The three left together, followed by Cpl. Cougle whom Shawn Goddwin states yelled, "Stop" or "Hey you". Shawn Goodwin states that, on hearing this, he stopped and walked back toward Cpl. Cougle, who then asked Shawn Goodwin his name. Shawn Goodwin gave Cpl. Cougle his name. Shawn Goodwin states that Cpl. Cougle then immediately grabbed his arm and back and said that he was under arrest for section 85. Shawn Goodwin states that he asked what section 85 was and Cpl. Cougle replied that he was drunk.

Shawn Goodwin states that Cpl. Cougle escorted him towards the police vehicle through the parking lot by means of holding his arm behind his back in an arm lock. He states that the arm lock did not hurt much at first, but was "more than was necessary". He argued with Cpl. Cougle about being drunk, protesting his innocence, in reply to which Cpl. Cougle pushed his arm up further. Shawn Goodwin asked him to ease up and states that Cpl. Cougle replied by again forcing his arm still further up Shawn Goodwin's back. At that point, Shawn Goodwin states, the arm lock hurt quite a bit and he therefore "shrugged off" Cpl Cougle and turned around and said "I'll

walk". Shawn Goodwin states that Cpl. Cougle seemed to be then immediately on top of him, forcing him to the ground and making a fist. Shawn Goodwin rolled Cpl. Cougle over and got on top of the policeman. In the process of doing this, Shawn Goodwin states he hit his head on the pavement. From this point on, Shawn Goodwin agrees that he tried his best not to allow Cpl. Cougle to get him in the police vehicle. He states that Cst. Bourassa-Muise took him by the other arm and that among Cst. Bourassa-Muise, Cpl. Cougle and Sheldon Rhyno, the three of them managed to get him to the police vehicle. He stated they slammed the car door on his legs, which he had kept out of the car to prevent the door from being closed.

At that point, the witness states, he asked his friend, John Allen, "Are you with me on this?", to which John Allen replied in the affirmative. He states that by this time, John Allen had been placed in the front passenger side of the police vehicle. He said the police then pulled John Allen out and placed him over the hood. Shawn Goodwin then kicked out both rear side windows of the vehicle. He states that he then tried to climb over the front seat with the intention of causing whatever further damage to the front of the vehicle he could. Cpl. Cougle reached in and prevented him from moving to the front and put up the barrier between the front and rear seats known as the "silent patrolman". He says he saw one of the police officers who had arrived to provide assistance arresting Denise Muise. He then tried to get out of the police vehicle through one of the broken windows. When the members who arrived at the scene attempted to remove him from the vehicle, he kicked at them and was hit with a flashlight by Cst. Kendall. He states that eventually the police officers surrounded him on both sides of the vehicle, one pushing, while another pulled and that, finally, over his physical and violent protests, he was removed and placed on the ground.

The witness states that during this, one of the members said, "Kick him in the nuts". He states that he took blows in the kidney area and was kicked in the hip. He was subsequently carried to another police vehicle and handcuffed, and at that point, basically gave up the struggle. He states that he suffered minor injuries in the nature of cuts and bruises which did not require medical attention. He testified that his right shoulder still bothers him when he is working out with weights. The witness says that he was offered medical assistance at the Correctional Centre, where he was detained following arrest, but declined, deciding that he wanted to keep the dried blood in place in order to have pictures of his injuries taken.

Shawn Goodwin states that he was held in the Correctional Centre until the following Monday morning when he was taken before the Provincial Court for appearance on a number of criminal charges relating to the incident. On Sunday afternoon, December 11, he had been taken before a Justice of the Peace pursuant to the relevant provisions of the Criminal Code, but he did not recall the event. With respect to his resistance to Cpl. Cougle's attempts to arrest him and place him in the police vehicle, Shawn Goodwin stated that he felt justified because he was not drunk and because of the original arm twisting or arm lock used by Cpl. Cougle to effect the arrest. When asked if he struck Cpl. Cougle, he replied "I hope I struck him", and stated that his intention throughout was that he was not going to get into the car if he could help it. He stated that he had no particular objectives in mind in offering such substantial resistance, but that it was simply to "do something".

Donald Goodwin, Shawn Goodwin's father, and the complainant in this matter, testified that Shawn Goodwin was not drinking before he left the house on December 10, 1988. He

stated he was at home and was later called by someone from the K-Mart whose voice he didn't recognize and who advised him that his son had been beaten by members of the RCMP. He stated he immediately drove to the K-Mart Mall and was told by Shawn Goodwin, who was then in the back seat of a police vehicle and about to be driven away, that he had been arrested under section 85 of the Liquor Control Act. Donald Goodwin states that he went to the Correctional Centre and he was told by a member of the RCMP that the member could not provide a great deal of information at that time and that Mr. Goodwin should check back in the morning. On leaving the Correctional Centre, Donald Goodwin testified that he encountered Ernest and Donna Robichaud who told Donald Goodwin that Sheldon Rhyno was the security guard who had been involved in the incident with Shawn Goodwin. Mr. Goodwin decided that he would go to the K-Mart Plaza to meet "this Sheldon Rhyno". At that point Donald Goodwin drove directly to the K-Mart Mall where he found Rhyno. He states that he approached Sheldon Rhyno from the rear and overheard him say something which he understood to be derogatory of his son. He then states that he punched Sheldon Rhyno in the head or face several times.

Cst. Bourassa-Muise testified that she and Cpl. Cougle attended three times at the K-Mart Mall on the evening of December 10, 1988. The first occasion was on the basis of the telephoned complaint of Sheldon Rhyno, who said that he had been called names by an unknown male (later established to be Shawn Goodwin) and felt embarrassed by the incident. Cst. Bourassa-Muise and Cpl. Cougle advised Sheldon Rhyno that they would attempt to speak with the person concerned. Cst. Bourassa-Muise described Sheldon Rhyno as not being very well composed at this time. She referred to the incident as a very minor one. Subsequently she and Cpl. Cougle, while patrolling elsewhere received a radio call to the effect that Shawn Goodwin had been identified as the individual referred to

earlier by Sheldon Rhyno and describing Shawn Goodwin's vehicle. Cst. Bourassa-Muise and Cpl. Cougle returned to the Mall and patrolled other areas of Yarmouth looking for the vehicle on the basis that it would perhaps contain an impaired driver.

At approximately 8:55 p.m., the two officers received radio information that Shawn Goodwin had returned to the Mall. They attended at the Mall and Sheldon Rhyno was waiting for them. Cpl. Cougle advised Sheldon Rhyno that they would talk to Shawn Goodwin. Sheldon Rhyno pointed him out and Cpl. Cougle approached Shawn Goodwin who was then exiting the Mall entrance. Cst. Bourassa-Muise states that she followed approximately 20 metres behind. She heard Cpl. Cougle yell out, "Shawn, I want to speak to you for a minute". Shawn Goodwin stopped and Cpl. Cougle escorted Shawn Goodwin to Sheldon Rhyno's presence and asked "Is this the guy?" Sheldon Rhyno responded in the affirmative and she then heard Cpl. Cougle place Shawn Goodwin under arrest for section 85.

Later in her evidence, Cst. Bourassa-Muise stated that she heard Cpl. Cougle give the reasons for the arrest to Shawn Goodwin as "section 85" and creating a disturbance. She heard Shawn Goodwin protest that he was not drunk and observed Cpl. Cougle start to lead Shawn Goodwin by the arm in the direction of the police vehicle. Shawn Goodwin then "shrugged off" Cpl. Cougle who asked Shawn Goodwin not to give him a hard time. Cpl. Cougle took Shawn Goodwin by the arm again and she took a wrist hold on Shawn Goodwin's left arm. She states that somehow all three of them then fell to the ground. She does not know how it happened or who, if anyone, initiated this fall. Cpl. Cougle lost his glasses and asked for them from Denise Muise.

Cst. Bourassa-Muise heard a male voice (later established to be John Allen's) respond "No way, I'm not picking up your fucking glasses". The witness believes Cpl. Cougle would have attempted to handcuff Shawn Goodwin at that time but that he could not see without the aid of his glasses. She states that Shawn Goodwin, at one point during the scuffle on the ground, was on top of her.

Once the two officers got Shawn Goodwin to his feet, she again put restraint on his left arm and Cpl. Cougle held him by his right arm. She states Cpl. Cougle gave the keys of the police vehicle to Sheldon Rhyno, who brought the vehicle closer. She states Shawn Goodwin resisted all the way, demanding to be released and shouting obscenities. She states that she heard John Allen tell Shawn Goodwin, "You can take him on - he's smaller than you". She states she heard Denise Muise say, "Let him go. He will walk on his own".

The witness says that Cpl. Cougle eventually pushed Goodwin into the back seat of the police vehicle and got the door closed. She states neither Cougle nor Goodwin struck any blows to each other. She observed John Allen reach toward Cpl. Cougle with his hand, after which John Allen was arrested and placed in the police vehicle. At Cpl. Cougle's request, Cst. Bourassa-Muise restrained John Allen by using a finger hold. She states that immediately upon being placed in the vehicle, Shawn Goodwin tried to go into the front seat and Cpl. Cougle prevented him from doing so by raising the silent patrolman. At this time, while the witness had John Allen under restraint, she felt a "jolt" towards her while leaning against the vehicle and observed Shawn Goodwin kicking the side rear windows out. At this point a 10-33 (urgent request for assistance) was called by Sheldon Rhyno at Cpl. Cougle's request.

Cst. Bourassa-Muise states that she heard shouts from the crowd and some encouragement for Shawn Goodwin. She heard Shawn Goodwin ask for a cigarette while he was in the police vehicle and observed Denise Muise approach the police vehicle hesitantly. She saw Denise Muise's arm approach the door of the police vehicle and that Denise tried to calm Shawn Goodwin down. The witness stated that Denise Muise appeared confused and that Cst. Bourassa-Muise had a "limited" apprehension that Denise Muise would interfere. She states that Denise Muise did eventually move away from the police vehicle at Cpl. Cougle's request but that it took several requests for her to do so and that, in any event, she did not move very far away.

When the other assisting officers approached the damaged police vehicle, Cst. Bourassa-Muise states that Shawn Goodwin was very defensive and tried to climb out through the broken window. She observed Shawn Goodwin first kicking at Cst. Forbes and then saw Cst. Kendall move to the opposite side of the vehicle and hold Shawn by the neck in an effort to get him out. The witness was concerned about the size of the crowd. She stated that throughout the incident she could smell alcohol on Shawn Goodwin's breath and that he appeared very agitated.

The witness stated that at the request of Cpl. Cougle, Denise Muise was arrested by an assisting member and John Allen was arrested by Cpl. Cougle himself. She stated that all three individuals were then taken to the Yarmouth Correctional Centre and incarcerated. On the instructions of Cpl. Cougle, John Allen and Denise Muise were released on their own recognizances the following afternoon, and Shawn Goodwin was retained in custody after appearing before a Justice of the Peace. He was then held until the following Monday morning when he appeared before Provincial Court.

Cst. Bourassa-Muise stated she received no instructions from Cpl. Cougle or any other member of the RCMP and entered into no discussions with Cpl. Cougle or any other member regarding the need for incarceration of Denise Muise or John Allen. She described the decision to hold Shawn Goodwin until an appearance before a JP, with the recommendation that he be incarcerated until Monday morning, as a joint decision between herself and Cpl. Cougle. She said the decision was based on their fear that Sheldon Rhyno's safety would be prejudiced if Shawn Goodwin were to be released at that time. Cst. Bourassa-Muise testified that she did not provide instructions to the Crown Prosecutor's office to request that conditions be placed on Shawn Goodwin's release from custody when he appeared in Provincial Court. Her reasons for not seeking such conditions were that she believed the Court itself would handle it. The witness stated that she knew of no public interest reason why Denise Muise should have been incarcerated following her arrest. She stated that "in hindsight" a reason for the incarceration of John Allen following his arrest would be fear for the safety of Sheldon Rhyno. Rhyno had been threatened by Shawn Goodwin earlier that evening and in fact, assaulted by Shawn Goodwin's father, Donald Goodwin. She stated, however, she did not learn of the assault by Donald Goodwin until after John Allen's incarceration.

Cpl. Cougle testified that he had been a member of the RCMP since 1969. He testified that on the third occasion of attending at the K-Mart Mall on December 10, 1988, at the request of Sheldon Rhyno, he and Cst. Bourassa-Muise had Shawn Goodwin identified to them by Sheldon Rhyno. The Corporal testified that he approached Shawn Goodwin who was leaving the Mall entrance and yelled at him to stop by hollering "Shawn". He states that Shawn Goodwin stopped, turned around and said to Cpl. Cougle, "What the fuck do you want?". Cpl. Cougle says that he asked Shawn Goodwin what his

name was, to which Shawn Goodwin replied, giving his full name. Cpl. Cougle stated that he told Shawn Goodwin he wanted to talk to him, took Shawn Goodwin by the arm and led him to the presence of Sheldon Rhyno where he asked Mr. Rhyno if this was the person who was causing problems. He states that Shawn Goodwin made no attempt to leave, called Sheldon Rhyno a "cocksucker", and told Cpl. Cougle, "Fuck you, too". Cpl. Cougle states that there were between ten and fifteen people in the immediate vicinity at the time these statements were made. He states that he warned Shawn Goodwin against further obscenity and that when Shawn Goodwin did, in fact, utter more obscenities, Cpl. Cougle immediately arrested him under section 85 of the Liquor Control Act and for creating a disturbance. Cpl. Cougle states that Shawn Goodwin protested that Cpl. Cougle had no authority and that he had nothing on him. Cpl. Cougle stated that his reasons for arresting Shawn Goodwin on the Liquor Control Act charge were his observations of Shawn Goodwin's bloodshot eyes, the strong smell of liquor emanating from his breath, his belligerent attitude and his use of obscenities.

Cpl. Cougle states that when he began to escort Shawn Goodwin to the police vehicle by holding Shawn Goodwin's right arm, Shawn Goodwin "shrugged him off" and struck out with his hand in the direction of the Corporal's head. Cpl. Cougle attempted to grab Shawn Goodwin, the two of them then tripped and fell to the ground, causing the Corporal to lose his glasses. Without his glasses, Cpl. Cougle could not succeed in applying handcuffs. He says that he ultimately managed to stand Shawn Goodwin up and resumed escorting him to the police vehicle.

Cpl. Cougle denied applying sufficient pressure to Shawn Goodwin's arm to cause Shawn Goodwin to walk on his tip toes. He stated that he believed the armhold was necessary and

that Shawn Goodwin would have run if he had allowed him to walk on his own. His basis for this belief was that Shawn Goodwin "took off through the doors" when he saw Cpl. Cougle approaching him in the Mall. Cpl. Cougle also said that he was concerned about the size of the crowd which he numbered at approximately 200-300 persons. He said a number of people in the crowd were jeering in his direction, and he was concerned for the safety of Cst. Bourassa-Muise.

Cpl. Cougle managed to place Shawn Goodwin in the back seat of the police vehicle. He testified that Shawn Goodwin's legs were accidentally jammed in the door when Goodwin struck out with his legs at the same time as Cpl. Cougle was attempting to close it.

The witness described Shawn Goodwin at that point as being "just wild". He testified that immediately prior to placing Shawn Goodwin in the vehicle, John Allen said to Shawn Goodwin "You're bigger - take him", and that John Allen jumped on Cpl. Cougle's back. When Shawn Goodwin kicked out the rear windows of the police vehicle, Cpl. Cougle requested Sheldon Rhyno to take the police radio and make the 10-33 urgent assistance request. The witness also testified that while he was in the process of escorting Shawn Goodwin to the police vehicle, Denise Muise grabbed the policeman's right arm. He says that once he had Shawn Goodwin in the vehicle, she also opened the back door and tried to give Shawn Goodwin a cigarette and the Corporal shut it again. Cpl. Cougle says he told Denise to leave and, while she backed off a bit, she did not leave.

Cpl. Cougle testified that he was the arresting officer for all three individuals. He personally arrested John Allen for obstructing a police officer in the execution of his duty and he also instructed Cst. Cameron to arrest Denise Muise on the same charge. He stated that he was not involved with

the other officers in removing Shawn Goodwin from the damaged police vehicle after the windows were broken.

Cpl. Cougle stated that following the arrests, all three individuals were taken to the Yarmouth County Correctional Centre. John Allen and Denise Muise were held overnight until the following afternoon when they were released on their own recognizances. For the purposes of this release, Cpl. Cougle regarded himself as the officer in charge. Shawn Goodwin, also on Cpl. Cougle's instructions, was taken before a Justice of the Peace who remanded Shawn Goodwin until the following morning to appear in Provincial Court. Goodwin's appearance was to be in answer to charges under section 118(a) Criminal Code (resisting arrest), section 387(4) Criminal Code (willful property damage), Section 171(a)(ii) Criminal Code (causing a disturbance by being drunk), section 171(a)(i) Criminal Code (causing a disturbance by insulting language), and section 246(1)(a) Criminal Code (assaulting a police officer).

Cpl. Cougle admitted, as did Cst. Bourassa-Muise, that there was no reason for retaining custody of Denise Muise following her arrest, and that she should have been released. He stated that he did not leave any instructions to detain Denise Muise, but took responsibility for the decision as he was the officer in charge.

The witness expressed his opinion that John Allen was properly detained in custody overnight because he was under the influence of alcohol, was a friend of Shawn Goodwin's, and Cpl. Cougle was apprehensive for the safety of Sheldon Rhyno. Cpl. Cougle had previously testified that he had come to the decision to keep John Allen in custody at the time of or shortly after the arrest. He said that he did not learn of the Donald Goodwin assault on Sheldon Rhyno until after he left the

Correctional Centre following John Allen's incarceration. Cpl. Cougle stated that he did not consider any alternative to the arrest and detention of Shawn Goodwin prior to the Monday morning court appearance because he wanted strong conditions of release imposed by a Provincial Court Judge, to the effect that Shawn Goodwin stay away from Sheldon Rhyno and the K-Mart Mall. Cpl. Cougle stated that he had thought Cst. Bourassa-Muise would ask the court through the Crown to impose these conditions because, by the time of the court appearance, she would be the "investigating officer". He did not give instructions to Cst. Bourassa-Muise to request these conditions. He stated that his policing experience had led him to the belief that conditions of release were "stronger" if imposed by a judge as opposed to a Justice of the Peace.

Cpl. Cougle also testified that he had never before in his policing career called a 10-33 (urgent request for assistance).

In response to questions from the Commission, Cpl. Cougle stated that he did not go to the Mall with the intention of arresting and detaining Shawn Goodwin. He said he made the decision to arrest only after Shawn Goodwin began swearing in the presence of 10 or 15 people at the time of his initial contact with him. He offered his opinion that Shawn Goodwin would not have passed a breathalyzer test. Cpl. Cougle gave the opinion that Shawn Goodwin had more to drink than one rum and two shooters.

FINDINGS OF FACT

Having heard, and considered, all of the testimony of the witnesses, and the exhibits tendered in the course of this hearing, the Commission has reached the following conclusions of fact in respect of these complaints.

Between 6:00 and 6:30 p.m. on December 10, 1988, a verbal altercation and mild shoving match occurred between Shawn Goodwin and Sheldon Rhyno, a security guard, in the interior common area of the K-Mart Plaza Mall, Yarmouth, Nova Scotia.

The altercation began when Sheldon Rhyno asked Tammy Thibeau, a young woman who was with Shawn Goodwin, to move along from the location in which she and Goodwin were situated. Shawn Goodwin attempted to come to Tammy Thibeau's defence. An argument developed and escalated in intensity to the point where Shawn Goodwin uttered profanities and threats to Sheldon Rhyno. Goodwin's language was loud enough to be heard by pedestrians in the immediate area. Shawn Goodwin told Sheldon Rhyno in no uncertain terms that he, Goodwin, would not leave the area. Each man laid a hand on the other at least once in a mild, shoving manner.

Sheldon Rhyno then left the area where the confrontation occurred and phoned the appropriate detachment of the RCMP. At the time of the first call he did not know the identity of Shawn Goodwin. When Cpl. Cougle and Cst. Bourassa-Muise arrived at the Mall in response, Sheldon Rhyno was unable to locate or name Shawn Goodwin. At that point, the officers did not consider the incident to be significantly serious and had not necessarily formed any intention to effect an arrest. They merely intended to speak to the individual concerned.

At some point later, after the officers left, Sheldon Rhyno became aware of Goodwin's identity through a conversation with Darryl Ollenburger. Sheldon Rhyno then made a further telephone call to relay this information to the RCMP. Cpl. Cougle and Cst. Bourassa-Muise then returned to the Mall in response to this second call and subsequently patrolled the

area in search of the vehicle Shawn Goodwin was reported to be driving, in the belief that he was perhaps impaired.

With respect to Shawn Goodwin's consumption of alcohol that evening, the uncontradicted evidence is that Goodwin and his friend, John Allen, attended a tavern prior to coming to the Mall and that Shawn Goodwin did not consume beer at the tavern. Shortly before the altercation between Goodwin and Rhyno, Shawn Goodwin and John Allen each had one drink of rum and two shooters (liquers) at Pepper's Lounge in the K-Mart Mall. Subsequent to the altercation, Goodwin and Allen left the Mall and purchased a quart of rum at a downtown liquor store. None of the rum was consumed. The two rented a room at the Grand Hotel in Shawn Goodwin's name and attended again at a local tavern. There is no evidence that Shawn Goodwin consumed beer on this second visit to the tavern, or that, except for the drinks at Pepper's, he otherwise consumed alcohol that day. The Commission accepts his evidence that he is not much of a beer drinker.

Shawn Goodwin and John Allen returned to the K-Mart Mall sometime shortly after 8:00 p.m. There they met Denise Muise outside the Mall. Denise Muise and Shawn Goodwin became engaged in an argument with respect to Shawn Goodwin's proposed activities for the evening. These planned activities included further drinking. John Allen left Shawn Goodwin and his girlfriend and went alone to Pepper's Lounge and consumed another drink of rum. Shawn Goodwin and Denise Muise entered the Mall to look for John Allen. While in the Mall, Shawn Goodwin and Sheldon Rhyno walked past each other and Shawn Goodwin made some threatening or derogatory comment to Sheldon Rhyno.

As a result of this contact with Goodwin, Rhyno called the RCMP a third time, and Cpl. Cougle and Cst. Bourassa-Muise once again attended at the Mall. Cpl. Cougle and Shawn Goodwin caught sight of each other when Goodwin was near the Mall entrance. From that moment Goodwin knew the police were after him, and tried to leave--in the company of John Allen and Denise Muise--through the front entrance. Cpl. Cougle then moved swiftly through the interior of the Mall and exited through the front doors of the main Mall entrance. At this point, although Cpl. Cougle knew Shawn Goodwin's name, he had never seen him before and was not personally able to identify him. The policeman yelled Shawn Goodwin's name and told the individual identified to him as Shawn Goodwin to come back. Shawn Goodwin, who was then in the parking lot area outside the front entrance of the Mall in the general company of Denise Muise and John Allen, stopped, turned around and began walking back toward Cpl. Cougle.

Cpl. Cougle met Shawn Goodwin, took him by the arm and walked with him to the presence of Sheldon Rhyno and asked Rhyno if Goodwin was the person who had caused problems. Shawn Goodwin uttered obscenities at Cpl. Cougle and Sheldon Rhyno. At the time Goodwin did so there was a small number of pedestrians in the general vicinity. There is no direct evidence that any of these individuals heard these initial obscenities. At this time, Shawn Goodwin was exhibiting certain signs consistent with alcohol impairment. These were the odour of alcohol on his breath, bloodshot eyes, and general, agitated demeanour.

Based on these signs, at the point where Shawn Goodwin began the obscenities, Cpl. Cougle made the decision to arrest Shawn Goodwin for being intoxicated in a public place under section 85 of the Liquor Control Act. Cpl. Cougle then immediately placed Shawn Goodwin's right arm behind Shawn

Goodwin's back and placed his left hand on Shawn Goodwin's neck and began escorting Shawn Goodwin in the direction of his police vehicle.

Cst. Bourassa-Muise together with Sheldon Rhyno followed behind. As the group started making its way, Shawn Goodwin protested his innocence of the charge of being intoxicated, and told Cpl. Cougle that he had nothing on him and that he had no authority to arrest him.

In response Cpl. Cougle tightened the armhold by raising Shawn Goodwin's arm further up his back. Shawn Goodwin then protested that he would walk on his own without the armhold. Cpl. Cougle declined to release him and, in response, Shawn Goodwin wrestled himself out of the armhold and turned to face the Corporal. Cpl. Cougle moved to grab Shawn Goodwin again and they both fell to the ground together with Cst. Bourassa-Muise, who by this time had approached from behind and grabbed Shawn Goodwin by the left arm and hand. Cpl. Cougle lost his glasses and hat, and his vision was impaired without the glasses. A wrestling match occurred on the ground between the two officers and Shawn Goodwin. Eventually Cpl. Cougle got Shawn Goodwin to his feet and he and Cst. Bourassa-Muise resumed taking Goodwin forceably towards the police vehicle, which by this time had been moved closer to the scene by Sheldon Rhyno. By this point, Shawn Goodwin had firmly made up his mind to resist the arrest by Cpl. Cougle with as much force and vigour as he could generate.

In the meantime, shortly after Shawn Goodwin was brought to his feet, John Allen made a remark to Shawn Goodwin for the purpose of encouraging him to continue the struggle. John Allen grabbed Cpl. Cougle's arm in an effort to distract Cpl. Cougle from the task at hand. Allen picked up Cpl. Cougle's glasses and hat from the ground. Cpl. Cougle grabbed

the glasses from John Allen's hand, but Allen briefly retained possession of the hat before allowing Cst. Bourassa-Muise to take it from him.

At approximately the same time, Shawn Goodwin's girlfriend, Denise Muise, began repeatedly asking Cpl. Cougle to let Shawn Goodwin go, saying that Shawn Goodwin would walk by himself. As Shawn Goodwin became more greatly outraged, Denise Muise attempted to calm him down.

By the time Cpl. Cougle and Cst. Bourassa-Muise had regained control of Shawn Goodwin and were able to continue approaching the police vehicle with Shawn Goodwin, a crowd was beginning to gather. The size of the crowd grew rapidly throughout the incident to the point where it reached at least 100 persons, and probably more. At least one member of that crowd, Ernie Robichaud, attempted to incite assistance for or interference on behalf of Shawn Goodwin. He, and perhaps other members of the crowd, called the RCMP members "pigs". (The Commission was intrigued to hear the interesting assurances of one witness that a "pig" is not any police officer, but rather is a police officer who abuses authority and uses excessive force.)

Eventually the officers succeeded in placing Shawn Goodwin in the rear of Cpl. Cougle's police cruiser. Virtually immediately Shawn Goodwin attempted to climb into the front interior portion of the vehicle, for the express purpose of doing as much damage to the vehicle as he could. Cpl. Cougle prevented this maneuver by reaching into the car from outside and raising the silent patrolman. At or about this time, Denise Muise approached the rear door of the police vehicle and placed her hand at or near the door. She attempted to calm Goodwin down by talking to him. Shawn Goodwin asked for a cigarette and she attempted to comply. She either opened the

door of the vehicle, or made a motion to do so and was told to leave by Cpl. Cougle. She stepped back but did not leave the immediate area. At this point, Shawn Goodwin used his feet to kick out both side rear windows. He was unsuccessful in an attempt to kick out the rear window.

By this time, John Allen had been placed under restraint by Cst. Bourassa-Muise who was holding him against the car. Cpl. Cougle placed John Allen in the front seat of the police vehicle. Shawn Goodwin asked his friend, John Allen, "Are you with me on this?", to which John Allen replied in the affirmative.

On hearing this, Shawn Goodwin attempted to exit the police vehicle through the broken window and was restrained by Cst. Forbes, who, by this time, had arrived at the scene to provide assistance. Cst. Forbes actually attempted to pull Shawn Goodwin the remaining way through the window but all that came through was Shawn Goodwin's jacket. One of the assisting officers opened the rear door of the vehicle and Shawn Goodwin kicked at him. That officer stepped back and another officer approached Shawn Goodwin using his flashlight in a defensive manner to block Shawn Goodwin's continuing attempts to kick. A third officer ran to the opposite side of the police vehicle and opened that door, pulling Shawn Goodwin through the opened door while another officer attempted to control his legs from the open door on the other side of the car. Shawn Goodwin vigorously and with as much force as he could bring to bear resisted the efforts of these police officers to remove him from the vehicle. It took at least three, and possibly four officers to accomplish this task. Shawn Goodwin was then pushed to the ground with one officer providing restraint on his legs, another officer providing restraint on his upper body and a third or fourth officer managing to handcuff Shawn Goodwin's hands behind his back. It took several moments to

accomplish this and Shawn Goodwin continued to resist to the best of his ability. During this resistance, he suffered several minor cuts and abrasions, none of which were serious or called for any medical treatment.

Shawn Goodwin, Denise Muise and John Allen were then taken by police cruiser to the Municipal Correctional facility where they were held overnight. On the instructions of Cpl. Cougle, John Allen and Denise Muise were released the following day at 12:00 noon. Cpl. Cougle also gave instructions to Cst. Bourassa-Muise to have Shawn Goodwin taken before a Justice of the Peace, and to request that the JP remand Shawn Goodwin to appear before Provincial Court on Monday morning, the next day.

Only after the decision was made to incarcerate all three individuals did Cpl. Cougle become aware that Donald Goodwin, Shawn Goodwin's father, had assaulted Sheldon Rhyno. At that point, Cpl. Cougle had reasonable cause to believe that the release of Shawn Goodwin without conditions could pose a threat to Sheldon Rhyno's physical safety. He formed the opinion that it may have been detrimental to Sheldon Rhyno's safety to have Shawn Goodwin released without conditions. Cpl. Cougle did not provide any instruction either directly or through any other RCMP member to request the Crown to seek the imposition of any conditions on the release of Shawn Goodwin by Provincial Court. The Commission received no evidence or indication during this hearing that the Provincial Court imposed any conditions on his release.

CONCLUSIONS

The matters before the Commission in this hearing involve the application of force by various members of the RCMP

to the person of Shawn Goodwin, and the subsequent detentions of Shawn Goodwin, Denise Muise and John Allen.

With respect to the application of force by Cpl. Cougle to the person of Shawn Goodwin on the evening of December 10, 1988, the Commission is satisfied, on the evidence presented and having regard to all of the circumstances, that the force applied did not exceed that which was reasonable. It is clear law in the Province of Nova Scotia that a police officer who finds a person apparently committing an offence under a provincial statute, may, other requirements of the law being met, effect the arrest of that person. It is also clear that once he is properly empowered to effect an arrest, the officer is justified in applying such force as is reasonably necessary to do so.

In this case, the Commission is satisfied that Cpl. Cougle had found sufficient grounds in his observations of Shawn Goodwin's condition and demeanour to conclude that the latter was apparently committing an offence under s. 85 of the Liquor Control Act and that the resulting arrest was lawful. Having reviewed the evidence of all physical contact between Cpl. Cougle and Shawn Goodwin during the incident of December 10, 1988, the Commission is satisfied that the force applied by Cpl. Cougle to effect this arrest was reasonable.

Further, the Commission is satisfied that the conduct of and use of force by Cst. Sylvie N. Bourassa-Muise, Cst. Victor R. A. Cameron, Cst. Robert G. Forbes, former Cst. Denis R. Charbonneau, Cpl. Frederick D. Simmons, Cst. J. M. Lacroix, and Cst. G. W. Kendall in the post-arrest restraint of Shawn Goodwin constituted a lawful, measured and proportional response to the conduct of Shawn Goodwin as a person under arrest and was in accordance with RCMP policy and training standards.

Likewise, with respect to the arrest and removal of Denise Muise and John Allen from the area of the K-Mart Mall, the Commission is of the opinion that the conduct of all members of the force involved was, under the circumstances, appropriate. John Allen had made physical contact with Cpl. Cougle for the admitted purpose of interfering with Cpl. Cougle's activities in taking lawful custody of Shawn Goodwin. Denise Muise had made a motion which was consistent with an attempt to release Shawn Goodwin from the rear of the vehicle in which he was being held. In Allen's case, therefore, Cpl. Cougle had reasonable grounds to believe that, in acting as he did, Allen had committed the offence of "obstruction". Similarly, in Denise Muise's case the Corporal had grounds to believe that, in acting as she did, she apparently had committed the same offence.

In the result, having concluded that these arrests were lawful, and having regard to the size of the gathering crowd and the agitated state of some members of that crowd, the Commission is satisfied that it was necessary and in the public interest for members of the RCMP to remove Denise Muise and John Allen from the scene following their arrests for purposes of identification and for the service of appearance notices.

However, with respect to the detention of Denise Muise and John Allen, the Commission is decidedly of the opinion that the exercise of authority to detain these two persons in custody overnight was unjustified. In our view, these detentions constitute a manifest error in what was otherwise a professionally executed police operation. We find nothing in the evidence to support any conclusion that the public interest warranted the detention of these two individuals beyond the limited time required for the purposes of identification and service of notices.

The Commission notes that it is to the credit of the Force that, on the hearing of this matter, both Cpl. Cougle and Cst. Bourassa-Muise admitted this error with respect to the extended detention of Denise Muise.

Cpl. Cougle attributed the error in connection with Denise Muise to a failure of communication among various members of the force involved in her arrest. The Commission does not find this explanation satisfactory. Likewise, the Commission does not accept as satisfactory the explanation for the extended detention of John Allen given by either Cpl. Cougle or Cst. Bourassa-Muise.

Cst. Bourassa-Muise speculated at the hearing that a potential justification for John Allen's detention, in hindsight, might have involved an apprehension for the safety of Sheldon Rhyno. Cpl. Cougle's evidence was to a similar effect.

The Commission is of the opinion that these speculations, even in hindsight, do not approach a reasonable justification for the very serious decision to interfere with or deprive a citizen of his or her liberty. Cpl. Cougle had not become aware of the Donald Goodwin assault on Sheldon Rhyno until well after the decision to detain John Allen in custody had been made. Moreover, there was neither at the time, nor is there now evidence to support the attribution of blame to John Allen for the inappropriate conduct of Shawn Goodwin in engaging in his altercation with Sheldon Rhyno. Stated simply, therefore, at the time it was decided that John Allen was to be detained overnight, Cpl. Cougle had no evidence before him to fear a threat to Sheldon Rhyno's safety from John Allen.In the result, in our view, the reasons given by Cpl. Cougle for the overnight incarceration of John Allen have no merit.

Indeed, in our view, it would have been to the credit of the force if the error admitted with respect to the incarceration of Denise Muise had also been admitted with respect to the incarceration of John Allen.

With respect to Shawn Goodwin's detention, the Commission is of the opinion that it was appropriate to retain custody of Shawn Goodwin for the public interest reasons expressed by Cpl. Cougle until conditions of release could be imposed on him under the relevant Criminal Code provisions. These conditions, as Cpl. Cougle had testified, could have included the requirement that Shawn Goodwin stay away from the area of the K-Mart Plaza and from Sheldon Rhyno pending trial. However, in our view, it was not appropriate to request a remand by the Justice of the Peace on the afternoon of Sunday, December 11, 1988 merely to allow these conditions to be imposed by Provincial Court on the next day, Monday, December 12, 1988.

If only conditions of release had been sought, as opposed to further incarceration pending trial or other bail requirements, these conditions could and ought to have been requested of the Justice of the Peace. While Cpl. Cougle's own belief may have been that the accused would be more likely to follow conditions imposed by a Provincial Court Judge as opposed to those imposed than by a JP, Cpl. Cougle's belief that such a procedure would somehow result in "stronger" conditions was a misinterpretation of the Criminal Code.

The authority of a Justice of the Peace to impose conditions on interim release is set out in the Criminal Code and exists for the express purpose of preventing the unnecessary detention of an accused. The policy of the Criminal Code is beneficial not only to the accused, by restoring liberty at the earliest time consistent with the public interest, but also to the community at large.

RECOMMENDATIONS

The amendments introduced to the Criminal Code in 1972 by legislation known as the Bail Reform Act seek to balance various identified public interests justifying pre-trial detention with the fundamental principle that individual liberty be protected as fully as possible unless and until an accused is tried and convicted. Police officers are given a specific role to play in this process, including the difficult responsibility of applying the legislation's principles in an objective and disinterested manner.

We recommend that the Commissioner take all necessary steps to ensure that Cpl. Cougle, Cst. Bourassa-Muise and all other members of Yarmouth, Nova Scotia Subdivision familiarize themselves with and apply the release provisions of the Bail Reform Act in a fair and objective manner in order to ensure that in appropriate cases arrested persons are released from custody without undue delay. In particular, this should include a written examination of Cpl. Cougle and Cst. Bourassa-Muise on the release provisions of the Bail Reform Act. The results of this examination should be reported to the Chairman of the Commission.

DATED this 24th day of May, 1991.

BLAIR A. MITCHELL

GRAHAM W. STEWART

R. BARRY LEARMONTH

APPENDIX II

Royal Canadian Mounted Police | Gendarmerie royale du Canada

N.D. Inkster
Commissioner | Le Commissaire

June 24, 1991

Mr. Fernand Simard
Vice-Chairman
RCMP Public Complaints Commission
P.O. Box 3423
Station "D"
Ottawa, Ontario
K1P 6L4

Dear Mr. Simard:

I have reviewed the Commission Report of the Public Hearing into the complaint of Mr. Donald Goodwin, references 2000-PCC-89113 and 88G-3228.

I share your findings that all members involved acted properly and within the law with regards to the use of force and charges laid.

Although the detention issues surfaced during the hearing and the recommendation addressing these issues are not directly related to the complaint, I will take them under advisement. I will be instructing the Director, Enforcement Services to examine and review this matter. The results will be provided to the Commanding Officer "H" Division who will ensure that all members concerned are aware of proper procedure with respect to the Bail Reform Act.

I thank you for your advice and I look forward to receiving your final report.

Sincerely,

N.D. Inkster
Commissioner

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